



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

**Requestor Name**

ERIC A VANDERWERFF DC

**MFDR Tracking Number**

M4-16-1179-01

**MFDR Date Received**

JANUARY 6, 2016

**Respondent Name**

INSURANCE CO OF THE STATE OF PA

**Carrier's Austin Representative**

Box Number 19

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Therefore according to the 1996 Medical Fee Guideline this program does not have any limit on the number of FCEs allowed and they must all be paid, and up to 4 hours/FCE is permissible as necessary. Accordingly, please remit payment IMMEDIATELY."

**Amount in Dispute:** \$528.98

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "In reviewing the report, it is the carrier's position that these dates of services should not be separately paid as they are part of the Chronic Pain management program...Therefore is the carrier's position, the provider is completing these services as a way to re-evaluate the patient every two weeks as required by the ODG for the Chronic Pain Management Program. These services are part of the Chronic Pain Management Program and should not be separate, but paid as a bundle. In review of the carrier's payment, we have overpaid the provider."

**Response Submitted by:** AIG

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 5, 2015, February 2, 2015 and March 30, 2015	97750-FC x 3	\$528.98	\$140.28

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.204 sets out the Medical Fee Guideline for Workers' Compensation Specific Services.
3. 28 Texas Administrative Code §134.203 sets out the Medical Fee Guideline for Professional Services.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - 1 – Workers' compensation jurisdictional fee schedule adjustment.
  - 2 – This procedure requires a provider report.
  - 3 – The charge for the procedure exceeds the amount indicated in the fee schedule.

**Issues**

1. Did the insurance carrier reimburse the requestor pursuant to 28 Texas Administrative Code §134.204?
2. Is the requestor entitled to additional reimbursement?

## Findings

1. The requestor seeks additional payment for CPT Codes 97750-FC rendered on January 5, 2015, February 2, 2015 and March 30, 2015. The insurance carrier issued payments for each of the disputed dates of services and denied/reduced the remaining charges with denial/reduction code(s), "1 – Workers' compensation jurisdictional fee schedule adjustment, 2 – This procedure requires a provider report, and 3 – The charge for the procedure exceeds the amount indicated in the fee schedule."

28 Texas Administrative Code 134.204 states in pertinent part, "(g) The following applies to Functional Capacity Evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT Code 97750 with modifier 'FC'. FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required. FCEs shall include the following elements:

- (1) A physical examination and neurological evaluation, which include the following:
  - (A) appearance (observational and palpation);
  - (B) flexibility of the extremity joint or spinal region (usually observational);
  - (C) posture and deformities;
  - (D) vascular integrity;
  - (E) neurological tests to detect sensory deficit;
  - (F) myotomal strength to detect gross motor deficit; and
  - (G) reflexes to detect neurological reflex symmetry.
- (2) A physical capacity evaluation of the injured area, which includes the following:
  - (A) range of motion (quantitative measurements using appropriate devices) of the injured joint or region; and
  - (B) strength/endurance (quantitative measures using accurate devices) with comparison to contralateral side or normative database. This testing may include isometric, isokinetic, or isoinertial devices in one or more planes.
- (3) Functional abilities tests, which include the following:
  - (A) activities of daily living (standardized tests of generic functional tasks such as pushing, pulling, kneeling, squatting, carrying, and climbing);
  - (B) hand function tests that measure fine and gross motor coordination, grip strength, pinch strength, and manipulation tests using measuring devices;
  - (C) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill; and
  - (D) static positional tolerance (observational determination of tolerance for sitting or standing)."

28 Texas Administrative Code 134.204 states in pertinent part, "(n) The following Division Modifiers shall be used by HCPs billing professional medical services for correct coding, reporting, billing, and reimbursement of the procedure codes... (3) FC, Functional Capacity--This modifier shall be added to CPT Code 97750 when a functional capacity evaluation is performed."

Review of the submitted documentation for each disputed services titled, "*FUNCTIONAL CAPACITY EVALUATION*", documents the following:

- The requestor documented 3 hours (12 units) for date of service, January 5, 2015
- The requestor documented 3 hours (12 units) for date of service, February 2, 2015
- The requestor documented 3 hours and 30 minutes (14 units) for date of service, March 30, 2015

The requestor appended modifier 'FC' to CPT Code 97750, which supports that the requestor billed for a functional capacity evaluation on the dates indicated above. Per 28 Texas Administrative Code 134.204 (g) "A maximum of three FCEs for each compensable injury shall be billed and reimbursed... Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test." Review of the submitted documentation supports the following;

- The requestor's documents 3 hours of CPT Code 97750-FC for the initial test was billed on January 5, 2015.
- The requestor's documents 3 hours of CPT Code 97750-FC for the interim test was billed on February 2, 2015, however per 28 Texas Administrative Code 134.204(g) a maximum of two hours is reimbursed for an interim test.
- The requestor's documents 3 ½ hours of CPT Code 97750-FC for the discharge test was billed on March 30, 2015, however per 28 Texas Administrative Code 134.204(g) a maximum of three hours is reimbursed for a discharge test.

The Division finds that the insurance carrier's denials of "2 – This procedure requires a provider report" is not supported, as a result, reimbursement is determined pursuant to 28 Texas Administrative Code §134.203.

2. 28 Texas Administrative Code §134.203 states in pertinent part, “(c) To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications. (1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83. For Surgery when performed in a facility setting, the established conversion factor to be applied is \$66.32. (2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year...”

Review of the submitted documentation finds the following:

The requestor billed for 3 hours of CPT Code 97750-FC for the initial test on January 5, 2015, per Division rule a maximum of 4 hours is reimbursable for the initial test. The MAR amount for 3 hours is \$632.44, the insurance issued a payment in the amount of \$488.96.

The requestor billed for 3 hours of CPT Code 97750-FC for the interim on February 2, 2015, however per Division rule a maximum of 2 hours is reimbursable for the interim test. The MAR amount for 2 hours is \$421.60, the insurance issued a payment in the amount of \$488.96.

The requestor billed for 3 ½ hours of CPT Code 97750-FC for the discharge test on March 30, 2015, however per Division rule a maximum of 3 hours is reimbursable for the discharge test. The MAR amount for 3 hours is \$632.44, the insurance issued a payment in the amount of \$568.28

The insurance carrier issued a total payment amount of \$1, 546.20. The Requestor is entitled to a total reimbursement of \$1,686.48 minus the insurance carrier payment of \$1,546.20, leaves a recommended amount to the requestor of \$140.28, therefore this amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$140.28.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$140.28 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
March 10, 2016  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

***Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.***